merit further investigation as to their truth. Since this is a matter upon which the opinions of individual judges may reasonably differ, an appellate court ought not to interfere with the judge's exercise of his discretion under section 327 of the National Land Code unless the way in which he exercised it is shown to have been manifestly wrong ...".

In the circumstances is it just for the learned Judge to restore the caveat? The answer must depend on the facts and merits of each particular case. On payment of the full purchase price on April 1, 1978 the purchaser obtained the document of Title to the land from the vendor. By paragraph 9 of the affidavit the respondent stated that "the issue document of title to the said land has been and is presently in my possession." True no caveat was lodged. It may be that she thought that her interest was sufficiently protected by taking possession of the document of Title and also that her husband was then building the house on the land. Further, the registered proprietor had executed a Memorandum of Transfer as mentioned earlier. The evidence that the appellant had prior notice is overwhelming. We do not think the learned Judge was wrong to refuse restoring the caveat.

We see no reason in the instant case to interfere with the decision of the learned Judge. Accordingly, we would dismiss the appeal with costs. Deposit to the respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; Sri Ram, Zulkifly & Kumar.*

BERTAM CONSOLIDATED RUBBER CO. LTD. v. COLLECTOR OF LAND REVENUE PROVINCE WELLESLEY

[F.C. (Salleh Abas C.J. (Malaya), Mohamed Azmi & Syed Agil Barakbah F.JJ.) June 22, 1983 and January 14, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 289 of 1982]

Land Law – Land Acquisition – Award of Collector of Land Revenue increased by Judge – Appeal – Respective functions of High Court and Federal Court relating to claims for compensation – Estate land subject to constraint in s. 214A of National Land Code – Failure to show that award of Judge represent a fair market value of land – National Land Code, s.214A

In this case part of the appellants' oil plam estate had been acquired for a public purpose. The Collector of Land Revenue valued the land at $12,600 per acre. The appellants objected to the award and on a reference to the High Court, Abdul Razak J. sitting with two assessors enhanced the Collector's award to $15,000 per acre. The appellants appealed.

Held: the appellants had failed to discharge the burden of showing that the increase in the award by the learned judge did not represent a fair market value of the scheduled land. Having regard to all the evidence, the Judge's valuation of $15,000 per acre was not inadequate or wrong in fact or law.

Case referred to:

(1) *Collector of Land Revenue* v. *Alagappa Chettiar* [1971] 1 M.L.J. 43, 44.

FEDERAL COURT.

N. Chandran for the appellants.

Mohamed Saari bin Yusoff, Legal Adviser, Penang, for the respondent.

Cur. Adv. Vult.

Mohamed Azmi F.J. (delivering the Judgment of the Court): The scheduled land of which the market value is in dispute in this appeal was part of the appellants' oil palm estate near the township of Kepala Batas hereinafter referred to as "Bertam Estate"). The land acquired for the purpose of LPN complex was approximately 20 acres which was small in size compared to the 5,000 total acreage of Bertam Estate. The relevant date for determining the market value by virtue of Section 8 acquisition under the Land Acquisition Act, 1960 was June 19, 1980. Relying on Encik Fernandez' valuation report, the Collector of Land Revenue made an award of $12,600/- per acre both for Lot 2014 and Lot 185 – the two lots affected by the acquisition. The appellants objected to the award and referred it to the Penang High Court under section 38 of the Act. Abdul Razak, J. sitting with two Assessors enhanced the Collector's award to $15,000/- per acre. The appellants are, however, still dissatisfied with the enhanced award and before us it is contended that the compensation should have been increased to $20,000/- per acre, based on KEMAS Centre acquisition which had taken place about 9½ months prior to the present acquisition, also affecting Bertam Estate.

As to the facts, we wish only to recapitulate some of the main features particularly as to the difference in expert opinion between Encik Fernandez (D.W.1) for the respondent and Mr. Loh Soong Chew (P.W.1) for the appellants. The sub-

ject land was situated to the right of the main road as one proceeded from Butterworth towards Alor Star and it was about two miles after the town of Kepala Batas. Its road frontage was Jalan Lahar Ikan Mati, which was some distance away from the main road (see plan, Appendix 'A' to Encik Fernandez' report). The detailed description and location of the subject land had been fully set out in Encik Fernandez' report and quoted extensively by the learned Judge in his judgment, and there is no necessity for us to reproduce them here. The Collector's award of $12,600/- was based on Encik Fernandez' valuation of the land as agricultural user subject to the constraint placed by section 214A of the National Land Code which sought to control fragmentation of estate land. Encik Fernandez was of the opinion that since there was no evidence of sales of comparable lands to serve as a basis for determining the market value, and no evidence of sales of agricultural estates of similar size in the neighbourhood, in arriving at his valuation, he took the following main factors into consideration:–

(i) being estate land it was subject to the constraint of section 214A of the National Land Code;

(ii) although the subject land was under mature oil palm, its location outside the zone earmarked for development rendered its development potential very remote;

(iii) the subject land road frontage was Jalan Lahar Ikan Mati and not the Butterworth/Alor Star main road;

(iv) it was two miles away from Kepala Batas town;

(v) previous awards between $8,000/- and $20,000/- per acre, made and accepted by the owners in recent acquisitions affecting other estate land in the vicinity and Bertam Estate itself viz –

	Material date of acquisition	*Area acquired*
(1) Malakoff Estate (to the south of Bertam Estate) at $8,000/- per acre	13.9.1979	1 acre
(2) Choong Lye Hock Estate (adjoining Malakoff Estate) at $6,500/- per acre	13.9.1979	10 acres
(3) Bertam Estate at $12,000/- per acre (for low-cost housing)	7.6.1979	9 acres
(4) Bertam Estate at $20,000/- per acre (for KEMAS Centre)	30.8.1979	2 acres
(5) Bertam Estate at $11,400/- per acre (for road construction)	13.9.1979	18 acres

On the other hand, Mr. Loh for the appellant made separate valuation for the scheduled land and its oil palm. In his opinion, for each acre $16,000/- should be the market value for the land and $6,500/- for the crop. The learned Judge did not find any difficulty in rejecting this double accounting method of valuation. We agree that when the scheduled land is valued on the basis of agricultural land with its development potential added, separate valuation should not be made for its crops in determining market value of the acquired land. Mr. Loh's approach to valuation was also a novel one, in that he artificially treated the 20 acres of subject land as if it was distinct with separate title from the remaining 4,980 acres in Bertam Estate. He could not however find any evidence of sales of 20 acres of land from an estate of comparable size as Bertam Estate. He therefore relied on sales of estate land in Sungai Siput, Parit Buntar, Sungai Petani, Nibong Tebal and Simpang Ampat – all of which were not in the vicinity or neighbourhood of the land acquired. The appellants' valuation was rejected by the learned Judge as he found the evidence of sales relied upon by Mr. Loh (P.W.1) was unreliable. In considering the three previous acquisition awards in respect of Bertam Estate, the learned Judge reminded himself of what was stated at page 205 of *Aggrawalla*, 3rd Edition, which says that evidence of previous acquisition awards which were accepted are relevant to show the market value, and that prices which are given by the Collector to people whose lands are acquired and who accepted them are valuable evidence in ascertaining the market value of the property. Although he rejected Mr. Loh's valuation, he held in favour of the appellants by enhancing the Collector's award from $12,600/- to $15,000/- per acre. In doing so he used KEMAS Centre acquisition on August 30, 1979 as the cornerstone of his valuation. As set out above, KEMAS Centre was acquired at $20,000/- per acre from the appellants. The two acres for KEMAS Centre just as the 20 acres of subject land formed part of Bertam Estate. In our view, KEMAS Centre acquisition award which

was offered and accepted by the appellants is relevant in determining the market value, but adjustments must be made as to size, time factor and other dissimilarities between the land previously acquired and the subject land. This the learned Judge had sufficiently done. He had warned himself against using the previous acquisition exclusively and ignoring all other considerations in determining the market value. In taking KEMAS as the basis of his valuation he gave allowances for all dissimilarities. Thus, he took into account not only dissimilarity in size but also dissimilarity in location although both lands formed part of Bertam Estate – KEMAS being virtually in Kepala Batas town whereas the subject land was about two miles away. Further, KEMAS was within the draft town plan whereas the subject land was outside it and therefore not zoned for development. For these dissimilarities, the learned Judge made a deduction of 30%, and for the difference in time of acquisition date he added 5% because KEMAS was acquired about 9½ months earlier. The increased valuation of $15,000/- was therefore arrived at by deducting 25% from $20,000/-, the award made to KEMAS on August 30, 1979.

What is the respective function of the High Court and the Federal Court relating to claims for compensation under the Land Acquisition Act, 1960? For this we need only refer to the decision of the Privy Council in *Collector of Land Revenue* v. *Alagappa Chettiar.*[1] At page 44 Lord Diplock has this to say:–

"The appeal to the Federal Court under section 49 of the Land Acquisition Act 1960 is like any other civil appeal, by way of re-hearing. The Federal Court is entitled to review the inferences and conclusions of the High Court and to draw its own inferences and conclusions: *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys.* But where the inferences and conclusions of the High Court are based upon findings of primary fact which are dependent upon the credibility of the oral evidence of witnesses whom the trial judge alone has had the advantage of hearing and seeing, an appellate court ought to accept the High Court's findings of primary fact save in very exceptional cases. Similarly where expert oral evidence of valuers has been called at the trial and discloses a conflict of opinion between them, the judge's finding as to which he regarded as most reliable is entitled to considerable weight though it is less sacrosanct than his findings of pure fact which are dependent upon his view of whether or not particular witnesses were telling the truth. Finally, their Lordships would observe that land valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessments of damages or against apportionment of blame in actions for negligence an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong."

From the Memorandum of Appeal and the argument before us, it is clear that the appellants are no longer relying on the various sales of estate land referred to by Mr. Loh in his report, and that they seem to have conceded that separate valuation for the land and the crop should not be made. They are now prepared, it seems, to accept the learned Judge's adoption of KEMAS acquisition as a basis for arriving at a fair market value. Indeed, to be fair to Mr. Loh, he did state in his valuation report under the heading "Conclusion" that "if evidence of transactions within Kepala Batas and the immediate area are used, adjustments have to be made for differences in location and distance from urban development".

The appellants' main complaint is therefore not so much in the adoption of KEMAS acquisition as a basis of valuation, as the inclusion of draft town plan of Kepala Batas (Exhibit D.3) in computing the deduction of 30%. It is the appellants' argument that since the proposed town plan was only available for public information after July, 1980, according to the testimony of the Technical Assistant Town Planning, Kepala Batas Town Council (D.W.2), the town plan consideration was totally irrelevant, and based on KEMAS, the Collector's award should have been enhanced to $20,000/- per acre. It is true that the acquisition date of the subject land was prior to July 1980 and the Judge was aware of it and dealt with the matter in some detail. We think he had dealt with it sufficiently when he said in his judgment:–

"According to D.W.2 it had already been drawn in 1978. I expect the public would have seen it in 1980 by the time of the Gazette. I think that was the purpose of D.W.2 saying that although the plan was agreed to by Council in 1980 it was drawn 2 years before. I think the only effect of the plan being gazetted is that the Council cannot change it as their whim and fancy dictates without formally degazetting it."

Further, in arriving at the 30% deduction for locational disadvantages, the Judge did not take into consideration only the town plan but he also took into account that KEMAS was virtually in Kepala Batas town whereas the subject land was two miles away. We are of the view that in a era of rapid economic and social developments, estate or agricultural land in this country must necessarily have a development potential particularly when the property is situated in the vicinity of an existing town. The development potential can be imme-

diate or remote; the more immediate the potential, the higher would be its market value. In considering how immediate or remote such potential is at the relevant time, regard must be had to all the circumstances including similarities and dissimilarities between the land acquired and comparable lands in the neighbourhood. But the mere fact that the land acquired is located outside an area zoned by Local Authorities for development, cannot by itself deprive it altogether from any development potential. To do so is to presuppose that Local Authorities' decisions on zoning which in the main are based on administrative policy and convenience, are permanent and capable of superseding the National Land Code.

Be that as it may, having regard to the difference in size, location, and building potential between the KEMAS land and the subject land, we are not prepared to say that the learned Judge was wrong in making a deduction of 30% from the KEMAS acquisition award.

The other ground raised by the appellants is the failure of the learned Judge in treating the 20 acres subject land as distinct from the whole of Bertam Estate of which the scheduled land formed part. Mr. Chandran, counsel for the appellant, argued that "scheduled land" as defined by the Land Acquisition Act, 1960 must mean land actually acquired notwithstanding the nature of the title. For the purpose of valuation it is submitted that the part actually acquired should be treated separately from the remaining land not acquired. As Mr. Chandran himself admits, there is no known authority to support such proposition. Section 2(1) of the Act defines "scheduled land" as meaning "any land or lands included in a schedule prepared under section 8 and appended to any declaration or notification in Forms D, E, J and K". Before a declaration in Form D is executed, section 7 provides that the Collector shall prepare and submit to the State Authority – (a) a plan of the whole area of such lands, showing the particular lands, or *parts thereof,* which it will be necessary to acquire; and (b) a list of such lands, in Form C. It is clear that the definition of "scheduled land" does not deal with any aspect of method or mode of valuation. Similarly, section 1 of the First Schedule to the Act merely provides the relevant date when market value of "scheduled land" should be determined, but it does not provide for any particular method of determining the market value. There is nothing in the Act to say that "scheduled land" should be treated for the purpose of determining market value, as distinct from the remaining land not acquired, where it forms part of a bigger parcel of land; nor is there anything to prohibit consideration being given to the size, nature and use of the remaining land of which the "scheduled land" forms part. It is indeed difficult to imagine how a proper and fair valuation can be arrived at if the subject land in this appeal were valued as a separate parcel unrelated to the 4,980 remaining acres in Bertam Estate (see Modern Methods of Valuation of Land, Houses, and Buildings by Lawrence & Britton, 6th Edition page 335). In determining the amount of compensation to be awarded to any "scheduled land", section 2(d) of the First Schedule to the Act provides for damages for severance if by reason of the acquisition it affects injuriously the owner's remaining property. This is a clear recognition by the Act that where only part of a parcel of land is acquired, the remaining part of the land which is not acquired must necessarily be considered for the purpose of determining market value. In the present appeal, since appellants' valuation report (Exhibit P.1 at pages 21 and 32) did not recommend damages for severance, it is reasonable to assume that the remaining 4,980 acres of appellants' estate could not have been injuriously affected by the acquisition of the subject land.

It is also contended on behalf of the appellants that it was wrong for the learned Judge to take into account the constraint imposed by Section 214A of the National Land Code in determining the market value. Section 214A has the effect of prohibiting any transfer, conveyance or disposal in any manner of estate land unless approval is obtained first from the Estate Land Board. The object of this section is to prevent fragmentation of estate land like Bertam Estate without due consideration being given to social and economic consequences to the country. Although the constraint could be removed by application to the Estate Land Board, at the material date the subject land was not free from that legal as opposed to administrative constraint. As such the learned Judge was not wrong in law in taking it into consideration. Indeed, in examination-in-chief, Mr. Loh testified that in arriving at his valuation he gave 20% deduction for the effect of Section 214A NLC. But on perusing his valuation report he appears to have omitted to do so. If the 20% were deducted from his land valuation of $16,000/- per acre, it would reduce his own valuation to $12,800/-. There is therefore no merit in this appeal. If the learned Judge had erred at all it was on the side of generosity.

The appellants being the party claiming enhanced compensation must show to this Court the increase in the award made by the learned Judge does not represent a fair market value of the scheduled land. We find the appellants have failed to discharge this burden. Having regard to all the evidence, we do not consider the Judge's valuation of $15,000/- per acre as inadequate, or wrong in fact or law. We therefore dismiss this appeal with costs.

Appeal dismissed

Solicitors: *Presgrave & Matthews.*

RAVINDRAN v. MALAYSIAN EXAMINATIONS COUNCIL

[F.C. (Salleh Abas C.J. (Malaya), Hashim Yeop A. Sani & Syed Agil Barakbah F.JJ.) January 10 & 16, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 286 of 1983]

Administrative Law – Certiorari – Annulment of results of candidate in examination – Application for certiorari – Delay in application – Application dismissed – R.H.C. 1980, 0. 53 r. 1A – Malaysian Examinations Council Act, 1980, s.9.

Practice and Procedure – Certiorari – Application out of time – R.H.C. 1980, 0.53 r.1A.

In this case the Malaysian Examinations Council in exercise of its powers under section 9 of the Malaysian Examinations Council Act 1980 had annulled all the results of the appellant in the 1982 S.T.P. examination. The order to disqualify the examination results was made on July 6, 1983. The appellant received the order on July 15, 1983. Order 53 r. 1A of the Rules of the High Court, 1980 provides that leave to apply for an order of certiorari shall not be granted unless made within six weeks after the date of the proceeding objected to unless the delay is accounted for to the satisfaction of the Court or Judge to whom the application is made. In this case the application was made on August 30, 1983, that is, 8 days out of time, if the time began to run from the date the Council's decision was served and 13 days out of time if time began to run from the date of the decision of the Council. The learned trial judge rejected the explanation for the delay and held the application was time-barred. The appellant appealed.

Held: since the judge rejected the explanation for delay it followed that the Court had no jurisdiction to hear the application for leave for an order for certiorari. Whether the application for an order of certiorari had merits or not was irrelevant.

Case referred to:

(1) *Mersing Omnibus Co. Sdn. Bhd.* v. *Minister of Labour and Manpower* [1983] 2 M.L.J. 54.

FEDERAL COURT.

Karpal Singh for the appellant.

M. Mahalingam (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani F.J. (delivering the Judgment of the Court): This appeal arose out of a student's dissatisfaction about the Malaysian Examinations Council's decision to annul his Sijil Tinggi Pelajaran Malaysia results awarded to him in 1982. The Council apparently did this based on the undisputed fact that his scribbled notes were found on his table during an examination on a Chemistry paper. Basically his complaint was that he had already explained the circumstances leading to the discovery of the scribbled notes on his table and secondly he was not given an opportunity to be heard before his examination results were annulled by the Council.

On March 17, 1983 the STP results were released and the appellant obtained the results slip with annulment of the Chemistry results endorsed on the slip. He appealed for a review of this annulment to the Malaysian Examinations Council in his letter dated March 27, 1983. In June, 1983 he wrote again to the Council to expedite the hearing of his appeal. In the meantime the appellant had applied for a place in the local universities as well as in the University of Singapore. Ultimately only the Universiti Sains Malaysia Penang offered him a place in the Science Course Year 1.

On July 9, 1983 the Malaysian Examinations Council notified the appellant that the Council in exercise of its powers under section 9 of the Malaysian Examinations Council Act 1980 had annulled all his results in the 1982 examination. The power of the Council is apparently contained in section 9 of the Act which reads as follows:–

> "The Council shall, in relation to a specified examination, enjoy the prerogative of awarding and withdrawing certificates, withholding and cancelling the results of any candidate, and barring any person from taking the examination."

The order to disqualify his examination results was made by the Council on July 6, 1983. He received the order on July 15, 1983. Order 53 Rule 1A of the Rules of the High Court, 1980 provides that leave to apply for an order of certiorari shall not be granted unless made within six weeks after the date of the proceeding objected to except where the delay is accounted for to the satisfaction of the Court or Judge to whom the application is